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NOTES.

LAW SCHOOL—ORDER OF THE COIF—At the annual meeting of the University of Pennsylvania Chapter of the Order of the Coif on April 7, 1916, the following members of the Class of 1916 were elected to membership:

Heath Steck Clark	Louis E. Levinthal
Edward E. Eisenstein	Lemuel Braddock Schofield
Benjamin M. Kline	Paul Connor Wagner

Richard Hay Woolsey

APPEAL—HAS A BOARD OF CENSORS THE FINAL DECISION AS TO THE PROPRIETY OF A MOTION PICTURE FILM?—Because of the extension of the domain of administrative boards and quasi-judicial tribunals, a recent decision [1] in an appeal from an order of the Penn-

sylvania Board of Censors of Motion Pictures is of importance aside from the particular subject matter involved.

It was contended that, under the statute creating the Board, the censors had the sole and exclusive authority to determne the propriety of the films, and that on appeal the court was limited to an examination of the regularity of procedure and use of discretion by the censors.[2] The court held that upon appeal the whole matter was before the court *de novo,* to be examined and tried regardless of the former examination.

At common law an appeal in the technical sense as meaning a trial *de novo,* did not exist.[3] So in the absence of statutory authorization no appeal can be taken to a judicial tribunal from the decisions and orders of administrative bodies, such as county boards.[4] Furthermore, in matters of police regulation, when decisions resting on questions of public safety are entrusted to an administrative board, the right of appeal to a judicial tribunal need not be conferred.[5] The establishment of a state board of motion picture censors with power to prohibit the exhibition of films of which it does not approve is a valid exercise of the police power.[6] It is apparent then that a legislature need not grant an appeal from such a board of censors[7] and that unless expressly granted it does not exist.

On account of the various meanings attached to the word "appeal," the mere use of the word in a statute furnishes no certain guide to its precise meaning and effect.[8] The particular statute must

[1] Franklin Film Mf'g Corp'n, 25 Dist. R. 219 (Pa. 1916).

[2] Act of May 15, 1915, P. L. 534.

"Sec. 26.—If any elimination or disapproval of a film . . . is appealed from, such film, will be promptly re-examined, in the presence of such person, by two or more members of the board, and the same finally approved or disapproved promptly after such re-examination, with the right of appeal from the decision of the board to the Court of Common Pleas of the proper county."

[3] Evansville & T. H. R. Co. v. Terre Haute, 161 Ind. 26 (1903); Fouse v. Vandervort, 30 W. Va. 327 (1887).

[4] Canal Co. v. Bright, 8 Col. 144 (1884); Bridges v. Clay County, 57 Miss. 252 (1879); *in re* Searles, 127 Pac. 902 (Mont. 1912).

Where no appeal is provided, *certiorari* or other remedy is open to injured parties to review the proceedings. State Board of Com'rs of Polk County, 87 Minn. 325 (1902).

For cases on different kinds of quasi-judicial officers, see Mechem: Law of Public Officers, §§ 636-643.

[5] Curran v. Delano, 235 Pa. 478 (1912); Plymouth Coal Co. v. Pennsylvania, 232 U. S. 531 (1914).

[6] Mutual Film Co. v. Ohio Industrial Commission, 215 Fed. 138 (1914), affirmed in 236 U. S. 230 (1915); Mutual Film Co. v. Hodges, Gov. of Kan., 236 U. S. 248 (1915).

[7] Block v. Chicago, 239 Ill. 251 (1909); Mutual Film Corp'n v. Breitinger, 250 Pa. 225 (1915).

[8] Especially is this true in Pennsylvania. The Act of May 9, 1889, § 1,

be construed in order to determine the import of the term.[9] Resort must be had to the general policy of the law and to reasons drawn by analogy and from the practical consequences of applying one interpretation or another. The principal case furnishes an illuminating example of this method.[10] Statutes giving the right of appeal are liberally construed.[11]

The practice in "appeals" from quasi-judicial tribunals seems to favor a trial *de novo* by the court. Such is the general rule on an appeal from an order or decision of a county board.[12] In Connecticut, an appeal by a street railway from municipal authorities to the railroad commissioners, in a proceeding to locate a road, carries up the whole proceeding for review *de novo*,[13] and the same is true of an appeal to the court from a decision of the commissioners.[14] Under acts providing for appeals from certain quasi-judicial tribunals to courts, which statutes neither prescribed any course of procedure by, nor limited the power of, the appellate tribunal on such an appeal, it has been held that the legislature intended to confer upon the court jurisdiction to try and determine *de novo* all the issues of fact and law originally presented to the board.[15] The

P. L. 158, provides that all appellate proceedings heretofore taken by writ of error, appeal, or *certiorari*, shall hereafter be taken in proceedings to be called an appeal.

This Act does not extend the right or alter the modes of review, but merely changes the names of the former modes. Shoup v. Shoup, 205 Pa. 22 (1903); Katherine Water Co., 32 Pa. Super. 94 (1906).

See Monaghan: Pennsylvania Appellate Practice, § 48, Right of Review in Statutory Proceedings; *Ib.* § 182 (3), Appeal Defined.

[9] Carnall v. Crawford County, 11 Ark. 604 (1851); State v. Jacksonville Terminal Co., 41 Fla. 363 (1899).

[10] *Supra,* note 1. Barratt, P. J.—"Thus the technical meaning of the word 'appeal,' the literary construction of the sentence, and the reference to the Common Pleas, as well as the history of the statute, all point alike to a retrial. The magnitude of the interests involved, both property and otherwise, indicate the same intention on the part of the legislature."

[11] Snyder v. Circuit Judge, 80 Mich. 511 (1890); Stephens v. Cherokee Nation, 174 U. S. 445 (1898); 2 Lewis's Sutherland: Statutory Construction, § 717.

[12] Mahoney v. Shoshone County, 8 Idaho 375 (1902); Myers v. Gibson, 152 Ind. 500 (1898).

Cf. Goodnow: Principles of Administrative Law, p. 395: "Courts will not review the determination of assessors as to the value of the property, where such assessors have had jurisdiction and have applied right legal principles." Citing, McCrillis v. Mansfield, 64 Me. 198 (1875); Houston County Com'rs v. Jessup, 22 Minn. 552 (1876).

[13] Hartford v. Hartford St. Rwy. Co., 75 Conn. 471 (1903).

[14] Waterbury's Appeal, 78 Conn. 222 (1905).

[15] City of Rockford v. Compton, 115 Ill. App. 406 (1904),—appeal from board of fire and police commissioners upon removal of member of force; McMillan v. Board of County Com'rs, 93 Minn. 16 (1904),—appeal in proceeding for construction of a drainage ditch.

reasons applied in the construction of those statutes apply with equal force to the principal case.

R. K. D.

NOTE.—Since the above was written the Supreme Court of Pennsylvania has reversed the decision of the Court of Common Pleas. (April 17, 1916.)[16]

CONSTITUTIONAL LAW—FOURTEENTH AMENDMENT—PROHIBITIVE TAX ON TRADING STAMPS—The general use of trading stamps and coupons in connection with retail sales has been productive of considerable regulative legislation, the validity of which after frequent review in the state courts has now for the first time been considered by the Supreme Court of the United States. Twenty-three states have attempted either to prohibit or to impose license fees which are in effect prohibitive taxes upon the selling or use of trading stamps and coupons. Similar legislation has been enacted for the District of Columbia and the Territory of Hawaii.

In the state courts, the overwhelming weight of authority has condemned these statutes as an arbitrary discrimination against a legitimate business and as an unwarrantable interference with the liberty of the citizen, in violation of the Fourteenth Amendment.[1] In the state cases it has frequently been declared that the use of trading stamps and similar devices is but a novel means of advertising, not essentially different from other lawful methods of attracting custom; and that there is no reasonable basis for selecting this particular mode of advertising to be prohibited, or taxed out of existence.[2] Time and again have these decisions upheld the legitimacy of the trading stamp enterprise, and asserted that as there is nothing in the business detrimental to the public health, morals, safety, or welfare, the state can neither prohibit it directly

[16] In an opinion by Mr. Justice Von Moschzisker, the court said: "A careful reading of the statute convinces us it was never contemplated that the Courts of Common Pleas were to be constantly called upon to permit moving picture reels to be produced before them, and sit as supercensors thereof, in order to review the decisions of the administrative body created by the act. The evident intent was to grant a right of appeal to the Common Pleas Court so that tribunal could correct any arbitrary or oppressive orders which the Board of Censors might make, and nothing more; in other words, that the court might reverse the censors when the latter were guilty of abuse of discretion. This is the ordinary rule to which, on appeal, even this court restricts itself in reviewing an exercise of discretion, particularly of administrative officals."

[1] *Ex parte* Drexel, 147 Cal. 763 (1905); State v. Caspare, 115 Md. 7 (1911); Sperry & H. Co. v. Owensboro, 151 Ky. 389 (1912). The lower federal courts are in accord. Cottrell v. Sperry & H. Co., 227 Fed. 256 (1915).

[2] Hewin v. Atlanta, 121 Ga. 723 (1904); State v. Dodge, 76 Vt. 197 (1904).